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2
3 IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
4

5 In the Matter of)
6 Personal Restraint Petition of)
7 DARYL ROGERS II)
8 Petitioner.)
9

No. 567911

DIVISION TWO

FILED
COURT OF APPEALS
DIVISION II
2022 NOV -4 PM 1:03
STATE OF WASHINGTON
DEPUTY

10 COMES NOW petitioner pro se Daryl Rogers, with a personal restraint petition.

11 I. FACTS

12 In February 2016 Mr. Rogers was contacted by Detective Monica Hernandez regarding
13 child sexual abuse allegations made by Jazmyne Ogletree. On March 1, 2016 Rogers was
14 interviewed by Detective Hernandez and Detective James Phelps, where he was informed of the
15 allegations and the timeframe of the allegations. Rogers denied the allegations, Rogers informed
16 the detectives of a 2010 incident, between himself and the complaining witness' family, where
17 the police were called and asked the detectives to obtain documentation of this 2010 police
18 incident to prove his story and that the allegations were not possible. Rogers would attend two
19 additional interviews in March and early April 2016.

20 On December 30, 2017 Rogers was arrested on a warrant for Rape of a Child in the First
21 Degree and Child Molestation in the First Degree stemming from the allegations made by Ms.
22 Ogletree. Rogers was released on bail and issued a Public Defender (PD), Jeff Staples. PD
23 Staples requested documentation of the 2010 police incident from the Deputy Prosecuting
Attorney, Colin Hayes.

24 Rogers went to trial on 4 counts of Rape of a Child in the First Degree and 2 counts of
25 Child Molestation in the First Degree, with trial beginning October 29, 2018. On October 31,
26 2018 both the prosecution and defense rested it's cases. Later on October 31, 2018 at 4:43pm
27 DPA Hayes sent an email acknowledging that documentation of the 2010 police incident was
28 obtained by Detective Hernandez in 2016 while investigating this case, but has since been
29 misplaced. On November 2, 2018 Rogers was convicted of 3 counts of Rape of a Child in the
30 First Degree and 1 count of Child Molestation in the First Degree. On January 23, 2019 Rogers
31 was sentenced to 277 months to life on each count of Rape of a Child in the First Degree and 177
32 months to life on the count of Child Molestation in the First Degree.

33 Rogers appealed his convictions. While appealing these convictions Rogers filed multiple
34 motions to the trial court, all of which were either denied or transferred to the Washington Court
35 of Appeals Division II as personal restraint petitions (PRP). On appeal Rogers' convictions were

1 upheld and a mandate issued on March 3, 2021. Rogers PRP was denied and a mandate issued on
2 January 5, 2022.

3 II. Argument

4 A. Offender Score

5 i. Wash out

6 Petitioner contends that his juvenile conviction for attempted residential burglary on May
7 23rd, 2007 washed out in accordance with RCW 9.94A.527 (2)(c). In order for the trial court to
8 properly calculate the defendant's offender score, the defendant's criminal history based on prior
9 convictions must be determined according to RCW 9.94A.525. State v. Ross, 152 Wn.2d 220,
10 229, 95p.3d 1225 (2004). RCW 9.94A.525 (2)(c) determines if class c felony convictions can be
11 included in the defendants offender score. "[O]ffenses which 'shall not be included in the
12 offender score'... are said to have 'washed out.'" State v. Keller, 143 Wn.2d 267, 284, 19p.3d
13 1030 (2001) (quoting former RCW 9.94A.360 (2)(1996), decodified as RCW 9.94A.525 (2)).
14 The statue reads "Class C prior felony convictions other than sex offenses shall not be included
15 in the offender score, if since the last date of release from confinement (including full-time
16 residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence,
17 the offender had spent 10 consecutive years in the community without committing any crime that
18 subsequently results in the conviction." RCW 9.94A.525 (2)(c).

19 Attempted residential burglary is a Class C felony. The "last date of release from
20 confinement" on the 2007 attempted residential burglary conviction is Jun 22nd, 2007.
21 Petitioner's current conviction occurred on November 2nd, 2018, more than 11 years after the
22 2007 conviction (Exhibit A). Since the release from confinement on the petitioner's 2007
23 juvenile conviction for attempted residential burglary (a class c felony) occurred more than 5
years before petitioners current conviction. The 2007 conviction washes out and cannot be
included in the petitioner's criminal history or the calculation of the petitioner's offender score.

24 In 2019 the Washington State Supreme Court ruled in State v. Schwartz, 194 Wn.2d 432,
25 450 P.3d 141 (2019), a wash out case of a class c felony based on RCW 9.94A.525 (2)(c), stating
26 "[T]he statue is split into two separate classes; a trigger clause, 'which identifies the beginning of
27 the 5-year [wash out],' and a continuity/interruption clause, 'which sets forth the substantive
28 requirements an offender must stratify during the 5-year period.' Accordingly, the plain language
29 of RCW 9.94A.525 (2)(c) provides that the wash out period on certain prior convictions will
30 trigger when 5 years has elapse between the last date of release from confinement pursuant to a
31 felony conviction and a subsequent conviction." State v. Schwartz, 194 Wn.2d at 439-40
32 (Quoting State v. Ervin, 169 Wn.2d 815, 821, 239 p.3d 354 (2010)). Therefore the "washout
33 period" for the 2007 attempted residential burglary conviction triggered when 5 years elapsed
between the "last date of release from confinement" pursuant to the conviction and "subsequent
conviction," which occurred on November 2nd, 2018.

34 Petitioner also contends that the Washington State Supreme Court is well aware of the
35 specific language it uses. The Washington State Supreme Court could have stated the washout
36 period on class c felony convictions will trigger when 5 years elapse between the last date of
37 confinement pursuant to a felony conviction and a subsequent crime being committed, but it did
38 not use this language. Instead the Washington State Supreme court specifically stated "between
39 the last date of release from confinement pursuant to a felony conviction and a subsequent
40 conviction." If this court deems there is any ambiguity in what the Washington State Supreme

1 Court meant by this language, the rule of lenity applies; and the issue is to be construed in the
2 light most favorable to the petitioner. "Any such ambiguity would have to be resolved under the
3 rule of lenity. And the rule of lenity compels the interpretation that is less punitive, not more
4 punitive." State v. Linville, 191 Wn.2d 513, 521, 423 p.3d 842 (2018) (citing In re Pers.
5 Restraint of Hopkins, 137 Wn.2d 897, 901, 976 p.2d 616 (1999)); see also State v. Weatherwax,
6 186 Wn.2d 139, 155, 392 p.3d 1054 (2017) ("[T]he rule of lenity requires us to interpret the
7 statue strictly in favor of the defendant." (citing State v. Conover, 183 Wn.2d 706, 712, 355 p.3d
8 1093 (2015))); United States v. Davis, _ U.S. _ 139 s. ct. 2319, 2333, 204 L.Ed.2d 757 (2019)
9 ("[The rule of lenity] is founded on 'the tenderness of the law for the rights of individuals' fair
10 notice of the law 'and on the playing principle that the power of punishment is vested in the
11 legislature, not in the judicial department.'" (quoting United States v. Wiltberger, 18 U.S. (5
12 WHEAT.) 76, 95, 5 L.ed.37 (1820))). In petitioner's case that means washing out petitioners
13 2007 conviction of attempted residential burglary and not using it in petitioner's criminal history
14 or offender score.

8
9 ii. Criminal History

10 Petitioner contends that the state did not meet its burden in proving the alleged 2005
11 burglary in the first degree (case no.: 05800471-7) as apart of petitioner's criminal history. "In
12 calculating the offender score, the state must prove the criminal history by a preponderance of
13 the evidence. A prosecutors unsupported summary of criminal history is not sufficient to satisfy
14 the states burden. And it is not sufficient that the defendant does not object to the offender score
15 calculation since such a rule would effectively shift the burden of proving criminal history to the
16 defendant." State v. Cate, 194 Wn.2d 909, 912-13, 453 p.3d 990 (2019) (citing State v. Hunley,
17 175 Wn.2d 901, 287 p.3d 584 (2012)). Further, defendants are under "no obligation to present
18 the court with evidence of his criminal history." State v. Lopez, 147 Wn.2d 515, 521, 55 p.3d
19 609 (2002).

20 "The best evidence of a prior conviction is a certified copy of the judgement." Hunley,
21 175 Wn.2d at 911 (quoting State v. Ford, 137 Wn.2d 472, 480, 973 p.2d 452 (1999)). In the
22 petitioner's case the state presented a certified copy of the 2005 burglary in the first degree (case
23 no.: 05800471-7) judgement to the trial court during the testimony of Nancy Druckenmiller of
Clark County Sheriff's Office identification specialist did a conviction after trial hearing. Ms.
Druckenmiller was brought in to match petitioner to the 2005 burglary in the first degree (case
no.: 05800471-7) judgment and sentence by matching his fingerprints to the "certified copy" of
the 2005 burglary in the first degree (case no.: 05800471-7) judgment and sentence, but was
unable to match petitioner to this judgment and sentence. In a question and answer with the
prosecutor Ms. Druckenmiller testifies:

Q: (By Mr. Hayes) So as part of this case, did you compare those two sets of booking
prints of Daryl Craig Rogers to two different judgment and sentences?

A: Yes

Q: First one I'm going to hand up, pertaining to case number 05800471-7, is this one of
the judgment and sentences you viewed?

A: Yes, it is.

Q: Would it be fair to say that, due to the poor quality of the prints, you were not able to
make any comparison as to the prints on that judgment and sentence?

A: That is correct. VRP. 1467

1 It is clear from the testimony that the state did not meet its burden of proving the
2 defendant of the 2005 burglary in the first degree (case no.: 05800471-7) is the petitioner by a
3 preponderance of the evidence. To the contrary, this testimony effectively prevents the state from
4 proving who the defendant of the 2005 burglary in the first degree (case no.: 05800471-7) is at
all; as any other evidence that would prove this conviction would not only be secondary to the
“certified copy of the judgment,” any other evidence could only be verified by the “certified
copy of the judgment” of the 2005 burglary in the first degree (case no.: 05800471-7).

5 Therefore, petitioner maintains that the state has not, nor could not, meet its burden of
6 proving by a preponderance of the evidence that the 2005 burglary in the first degree (case no.:
05800471-7) is a part of the petitioner’s criminal history and the sentence should be vacated. The
7 Washington State Supreme court have “vacated sentences on multiple occasions where the state
8 failed to provide sufficient evidence of prior convictions.” Hunley, 175 Wn.2d at 911; see also
State v. Mendoza, 165 Wn.2d 918, 928-29, 205 p.3d 113 (2009); Lopez, 147 Wn.2d at 523;
Ford, 137 Wn.2d at 482. In conclusion the criminal history in petitioner’s case should not have
been included. Petitioner request that the case be remanded for resentencing without the criminal
history.

9
10 **iii. Same Criminal Conduct –**

11 Petitioner contends the trail court erred in concluding that the petitioner’s 3 rape of a
12 child convictions arose from separate and distinct conduct and that each of his 3 rape of a child
and 1 child molestation convictions constitutes the same criminal conduct under RCW
9.94A.589 (1)(a) and should have counted as 1 crime in the offender score for sentencing
13 purposes. RCW 9.94A.589 (1)(a) requires that to constitute same criminal conduct there has to
be multiple crimes with the same criminal intent, committed at the same time and place, with the
14 same victim. RCW 9.94A.589 (1)(a); see also State v. Muhammad, 194 Wn.2d 577, 600, 451
p.3d 1060 (2019); State v. Mandanas, 168 Wn.2d 84, 89, 228 p.3d 13 (2010); and State v. Tili,
139 Wn.2d 107, 985 p.2d 365 (1999).

15 In petitioner’s case there is no dispute that each of the convictions involve the same
16 criminal intent, the same victim, and the same place. The question here is whether they happen at
the same time? As petitioner’s judgment and sentence clearly shows, each of the acts constituting
17 the convictions occur at the same time (Exhibit A). This alone is enough to satisfy the same time
requirement necessary for the convictions to constitute the “same criminal conduct” under RCW
9.94A.589 (1)(a). Petitioner further contends that the acts described that constitute the
18 convictions occur over a continued period of time. The trail court reason 2.4 “double jeopardy
does not require the dismissal of any of the current trail convictions” (Exhibit B). But this does
19 not identify whether each act constituting a conviction was committed at distinctly separate
times, it only identifies which act occurred, in which room, of the single residence throughout the
commission of the crime, which implicates the unit of prosecution allowed.

20 The trial judge’s analysis was actually an analysis of “double jeopardy” not “same
21 criminal conduct.” The two analyses are similar, but distinctly separate. “A double jeopardy
violation claim is distinct from a ‘same criminal conduct’ claim, and requires a separate analysis.
22 A double jeopardy violation focuses on the allowable unit of prosecution and involves the
charging and trial stages. The ‘same criminal conduct’ claim involves the sentencing phase and
focuses instead on the defendants criminal intent, where the crimes were committed at the same
23 time and at the same place, and whether they included the same victim.” State v. French, 157
Wn.2d 593, 611-12, 141 p.3d 54 (2006) (citing State v. Tili, 139 Wn.2d 119 n.5). “Even though

1 they may be separate, albeit similar, analyses, a determination that a conviction does not violate
2 double jeopardy does not automatically mean that it is not the same criminal conduct.” State v.
3 Chenoweth, 185 Wn.2d 218, 222, 370 p.3d 6 (2016) (citing State v. Tili 139 Wn.2d at 124
(trying the defendants 3 first degree rape convictions did not violate double jeopardy but were
4 part of the same criminal conduct, the court held Tili’s criminal intent to commit several rapes
5 did not change from one act of penetration to the next)).

6 In the petitioners case, the judge’s analysis identifies 3 separate acts described
7 constituting the separate convictions, which is the unit of prosecution portion of the double
8 jeopardy analysis. In the analysis for “same criminal conduct” multiple units of prosecution are
9 not at dispute. The question is 1) did the acts constituting the convictions have the same criminal
10 intent or were in furtherance of the same objective criminal intent?; 2) did the acts constituting
11 the convictions have the same victim?; 3) did the acts constituting the convictions happen at the
12 same time and place? Here petitioner contends that these 3 acts were part of a single crime that
13 move from room to room in the single residence over a short continued period of time. As “[T]he
14 ‘same time and place’ element does not require simultaneous; rather, ‘a continuous,
15 uninterrupted sequence of conduct over a very short period of time’ satisfies this element.” State
16 v. Keeton, 1999 Wash.app LEXIS 199 (1999) (citing State v. Potter, 131 Wn.2d 177, 182-86, 942
17 p.2d 974 (1997)(10-minute.); State v. Longuskie, 59 Wash.app 838, 841-42, 801 p.2d 1004
18 (1996)(1 week.)); see also State v. Valencia, 2 Wn.App.2d 121, 126, 416, p.3d 1275, review
19 denied, 190 Wn.2d 1020 (2018) (“multiple offenses will be treated as occurring at the same time
20 if they are ‘part of a continuous, uninterrupted sequence of conduct over a very short period of
21 time.’” (quoting Potter, 133 Wn.2d at 183)). Additionally, in Longuskie the crime not only
22 happened over a week period, it also moved from location to location, the court still determined
23 that the same time and place requirement was met to constitute “same criminal conduct.” State v.
Longuskie, 59 Wn.app.838, 847, 801 p.2d 1004 (1990) (defendants actions in first degree
kidnapping and third degree child molestation, based on final act of kidnapping and molestation
after several instances of similar conduct, constituted the same course of criminal conduct
because they were committed in furtherance of the defendants basic objective intent to engage in
child molestation).

Similarly in petitioner’s case, each of the acts constituting a conviction was part of a
crime involving the same victim, that moved from room to room in the single residence over the
course of a single continuing period, with the same objective criminal intent. Therefore each of
the convictions satisfies the necessary elements required to qualify as “same criminal conduct”
under RCW 9.94A.589 (1)(a); and should have counted as 1 crime in the offender score for
sentencing purposes. In conclusion, the petitioner contends that these crimes consist of same
criminal conduct. Therefore, the petitioner request that the case be remanded and the petitioner
be resentenced under the same criminal conduct analysis.

20 B. Brady Violation

21 The State must disclose material which should be helpful to the defense. In Brady v.
22 Maryland, the United States Supreme Court established that a defendant has the right to the
23 production of exculpatory or impeaching evidence in the possession of the government. Brady v.
Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); United States v. Jennings, 960
F.2d 1488, 1490 (9th Cir. 1992). This requirement derives from the government’s dual role as the
sovereign and a party in criminal cases. A government prosecutor’s obligation is not to win all
cases it handles, but rather to act impartially to see “that justice shall be done.” Berger v. United

1 States, 295 U.S. 78, 88 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935), quoted in Strickler v. Greene,
2 527 U.S. 263, 281, 199 S.Ct. 1936, 1948, 144 L.Ed.2d 286 (1999). A just, fair trial can only be
3 insured when the government gives the defense all exculpatory or impeaching information it
4 possesses. Strickler, 527 U.S. at 282. The state must disclose evidence favorable to the accused,
5 that, if suppressed, would deprive the defendant of a fair trial. U.S. v. Bagley, 473 U.S. 667, 675,
6 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). This obligation to disclose evidence favorable to the
7 accused is not limited only to evidence in the prosecutor's personal possession. The scope of the
8 duty to disclose evidence also includes the individual prosecutor's "duty to learn of any
9 favorable evidence known to the others acting on the government's behalf in the case, including
10 the police." Strickler v. Greene, 527 U.S. 263, 281, 119 S.Ct. 1936, 144 L.Ed. 2d 286
11 (1999)(quoting Kyles v. Whitley, 514 U.S. 419, 437, 115 S. Ct. 1555, 131 L.Ed. 2d 490
(1995)(rejecting the State's invitation to adopt a rule that the State "should not be held
accountable under Bagley and Brady for evidence known only to police investigators and not to
the prosecutor." Id. at 438)). The Washington courts mirror these findings that the "State's duty is
to disclose and preserve all potentially material and favorable evidence." State v. Boyd, 29
Wn.App. 584, 591, 629 P.2d 930 (Div. I 1981) and that "[t]he government must disclose not only
the evidence possessed by prosecutors but also evidence possessed by law enforcement as well."
State v. Mullen, 171 Wn.2d 881, 894, 259 P.3d 158 (2011)(quoting Kyles v. Whitley, 514 U.S.
419, 437, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1999)); See also State v. Davila, 184 Wn.2d 55,
71, 357 P.2d 636 (2015)(ruling that the prosecutor's duty to disclose extends to information held
by others acting on the government's behalf, not just those facts within the prosecutor's file.)

12 The courts have previously held that whether a defendant made a specific request *could*
13 be a factor to consider in determining whether a due process violation had occurred when
14 evidence was destroyed. Boyd, at 588, (see e.g. State v. Renfro, 28 Wn.App. 248, 622 P.2d 1295,
15 review granted, 95 Wn.2d 1018 (1981)). However, when the evidence has an obvious value
16 before it is destroyed, the State is required to both preserve and disclose it even without any
request for disclosure. Boyd, at 591, (citing U.S. v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49
L.Ed.2d 342 (1976)(emphasis added)). This is because under both the federal and state
constitutions, due process in a criminal prosecution requires a fair trial, and the ability to present
an effective and complete defense. State v. Burden, 104 Wn.App. 507, 511, 17 P.3d 1211 (Div.
II 2001).

17 The state has a duty to preserve and to disclose evidence under due process. Burden, at
18 511, (citing State v. Wittenbarger, 124 Wn.2d 467, 475, 880 P.2d 517 (1994)). The Washington
19 State Supreme Court requires that if the State fails to preserve evidence that is materially
20 exculpatory, "criminal charges against the defendant must be dismissed." Burden, at 511-12,
21 (citing State v. Copeland, 130 Wn.2d 244, 279, 922 P.2d 1304 (1996)(citing Wittenbarger, at
22 475)(emphasis added)). Evidence is materially exculpatory if it meets a two-prong test: (1) its
23 exculpatory value must be apparent before the evidence is destroyed, and (2) the nature of the
evidence is such that the defendant is unable to obtain comparable evidence by reasonable
means. Burden, at 512, (citing Wittenbarger, at 475)(citing CA. v. Trombetta, 467 U.S. 479, 489,
104 S.Ct. 2528, 81 L.Ed.2d 413 (1984)). Only if the evidence does not meet the test as being
materially exculpatory, the evidence is deemed potentially useful, and the bad faith requirement
of the state gets added. Burden, at 512. However, once a court determines destroyed evidence
was materially exculpatory, there is no need to determine whether the state acted in bad faith.
Burden, at 514.

The court in Burden held that the state offering to give a substitute coat in apparent

1 likeness to the one lost from evidence, was not sufficient as a reasonable means of comparable
evidence. Burden, at 513-14. The court held the state being willing to stipulate that the coat did
2 not belong to the defendant, was not sufficient as a reasonable means of comparable evidence to
defendant's unwitting possession defense. The court found substitute garments would raise
3 credibility issues that would prejudice the defendant because the exact thickness foundation had
not been established prior to the loss or destruction of the evidence and *any stipulation as to the*
4 *coat not belonging to the defendant still impaired his ability to present a complete defense.* Id.
(emphasis added). Due process and a defendant's right to present a complete defense is so
5 important, that even stipulations to evidence in the actual defense, (that the coat did not belong to
the defendant, when the defense was unwitting possession) was not sufficient, and the court
6 dismissed with prejudice. The appellate court affirmed the dismissal with prejudice.

When evidence is materially exculpatory, and a defendant's due process rights are
7 violated by destruction of the evidence, whether the destruction was negligent or intentional does
not matter. *Seattle v. Fettig*, 10 Wn.App. 773, 775, 519 P.2d 1002 (Div. I 1974). In *Fettig*, the
8 defendant at trial was found not guilty of negligent driving, but found guilty of driving while
intoxicated with a video of his physical tests presented by the state at trial. Id., at 773. Upon
9 appeal of the conviction, defense learned the video tape had been destroyed by police, so he
moved to dismiss on grounds of due process violations. Id. The police officers were allowed to
10 testify as to their observations of the defendant's performance on the physical tests which the
video tape was a record of, either substantiating, or rebutting the officer's testimony. Id., at 775.
11 *The Court held the video was therefore material in that it was the only evidence that could rebut*
the officer's testimony against him. Id. (emphasis added). The municipal court judge testified that
12 although he couldn't recall specifically if it was this defendant, he did recall seeing a video at a
trial, wherein he did not see what appeared to be clear intoxication, and believed it could have
13 been the video of this defendant. Id., at 775-76 (emphasis added). The court therefore held the
evidence was material and favorable to the defendant, and violated the defendant's Fourteenth
14 Amendment Due Process Rights.

In this case Rogers was contacted and left a voicemail requesting a callback, regarding an
15 ongoing investigation, by Detective Hernandez in February 2016. Rogers returned the call and
was informed the case was regarding child sex abuse allegations made against him by Jazmyne
16 Ogletree, the complaining witness. Rogers would willingly submit himself to 3 in person
interviews. The first of which was conducted on March 1, 2016 by Detective Hernandez and
17 Detective Phelps. The Detectives informed Rogers the allegations being made stemmed from
sexual misconduct with the complaining witness that started in 2010 and happened multiple
18 times a week for over a year. Rogers denied the allegations and informed the detectives that he
only had contact with the complaining witness and her family for 1-2 months in 2010 and has not
19 had any contact with them since. Rogers also informed the Detectives there was an unfriendly
end to the relationship between himself and the complaining witness' family, that the last time he
20 seen the complaining witness and her family, Amanda Poindexter, the complaining witness'
mother, called the police in a failed attempt to have Rogers arrested. Rogers informed the
21 Detectives that there should be a police report, 911 call, or some other documentation that proves
this 2010 police incident occurred, documents the date of this 2010 police incident, and is
22 Rogers' proof of his story and it disproves the complaining witness' story of child sex abuse
allegations for over a year. Rogers requested of the Detectives to obtain documentation of this
23 2010 police incident (e.g. police report, 911 call recordings, CAD logs, dispatch call notes,
officer notes, etc...). More than a year later, on December 30, 2017, Rogers was arrested and

1 charged with multiple counts of Rape of a Child in the First Degree and Child Molestation in the
2 First Degree. On January 2, 2018, Rogers was released on bail to await trial. While waiting for
3 trial Rogers informed his Public Defender (PD), Jeff Staples, of the police documentation of the
4 2010 police incident, which the Detectives should have obtained in 2016, and asked PD Staples
5 to obtain copies of this documentation because the date of this documentation would contradict
6 the complaining witness' story. PD Staples made both written and verbal requests for these
7 documents to Deputy Prosecuting Attorney (DPA) Colin Hayes, but did not get a response back
(EXHIBIT C). PD Staples and his investigator John Visser made a separate CAD log request for
this 2010 police incident (EXHIBIT D). Rogers also made his own request for CAD logs
(EXHIBIT E). Both PD Staples and Rogers' CAD log requests were returned "no records
available" due to it being beyond the records retention period. (see RCW 40.14.060 and .070).
Documentation of the 2010 police incident or notice that it was in police possession was never
given to the defense during discovery.

8 Trial for this case began on October 29, 2018. Rogers' defense was that (a) the
9 complaining witness and her family did not live with or have contact with Rogers for a year.
10 Instead they only lived with and had contact with Rogers for less than 6 weeks (b) the short
11 amount of time the complaining witness and Rogers had contact in addition to 1. the amount of
12 people living in the home (8 people including: Rogers, Shatyra Rogers - Defendant's sister,
13 Demetrius Rogers - Defendant's brother, Montreal Douglas - Defendant's friend, the
14 complaining witness, Amanda Poindexter - complaining witness' mother, Xavier Owens -
15 complaining witness' brother, and James Poindexter - complaining witness' brother); 2. the 760
16 ft² of limited living space in the home (there's also 480 ft² of garage space used for storage for a
17 total of 1240 ft²); and 3. the schedules of everyone in the home made it impossible for these
18 crimes to have been committed and (c) the way the two families split was not on good terms
19 resulting in the 2010 police incident. During trial the 2010 police incident was referenced to
20 multiples times and was agreed on by both the prosecution and the defense that this 2010 police
21 incident was the last time Rogers had contact with the complaining witness or her family, further
22 establishing the importance of this incident. Although both sides agreed that this incident
23 occurred, the prosecution and defense disagreed on WHEN this 2010 police incident occurred
with the complaining witness stating it occurred over a year after the complaining witness and
her family began living with Rogers, and Rogers stating it occurred less than 6 weeks after the
complaining witness and her family began living with Rogers. Due to the two sides disagreeing
on when this 2010 police incident occurred the importance of any documentation that
definitively proves the date of this incident becomes critically important to corroborating either
the complaining witness' story or Rogers' story. The existence of documentation of the 2010
police incident was not mentioned by Detective Hernandez during her direct, cross, or rebuttal
testimony at trial. Nor was it mentioned by Detective Phelps during his direct or cross
examination testimony. On October 31, 2018 both sides rested its case and court was dismissed
for the day at 4:14pm. At 4:43pm on October 31, 2018, DPA Hayes sent an email to PD Staples,
acknowledging that Detective Hernandez had possession of documentation of the 2010
police incident in 2016 while investigating this case and now does not know where this
documentation is (EXHIBIT F). PD Staples did not inform Rogers of the email sent by DPA
Hayes (EXHIBIT G). On November 1, 2018 Rogers was found guilty of 3 counts of Rape of a
Child in the First Degree and 1 count of Child Molestation in the First Degree. Rogers was made
aware of the email sent by DPA Hayes in late September 2020 after requesting his entire case
file from PD Staples (EXHIBIT G). Similarly, the police report, 911 call recordings, CAD logs,

1 officer notes, or any other evidence of the 2010 police incident, which would have also
2 definitively identified the date this incident occurred, had been destroyed because Detective
3 Hernandez, Detective Phelps, and DPA Hayes had not requested to preserved them. These
4 records would have been retained under RCW 40.14.060 and .070 for 6 years making them
5 available in March 2016 while this case was being investigated (it should be noted that if the
6 complaining witness' story were true this documentation as well as the dispatch call notes would
7 have been available at least until June 2017, after Rogers was charged in January 2017). The
8 state failed to preserve these documents, despite this being a serious felony case on multiple
9 charges of Rape of a Child in the First Degree and Child Molestation in the First Degree.

10 The first prong in the test for materially exculpatory is the exculpatory value must be
11 apparent before the evidence was destroyed, lost or misplaced. First, the Detectives are to
12 investigate all information on a case with such serious charges - to find the objective, unbiased
13 documents and evidence that is impartial and have not been tainted by the parties involved in the
14 incident. Second, the Detectives have an obligation to turn over all relevant information to the
15 DPA to review prior to the DPA making the charging decision. Further, the DPA has an
16 obligation to obtain and review all the available information and evidence prior to making the
17 charging decision, to see if there is evidence that corroborates, or refutes the complaining
18 witness' statements, other statements and evidence provided. Most importantly in this case, even
19 if the Detectives have a habit of not investigating all information and turning over all relevant
20 evidence to the DPA and the DPA have a habit of not obtaining and reviewing all available
21 evidence, the value of the evidence being both material and exculpatory was immediately clear
22 upon Rogers informing the Detectives of this 2010 police incident, that the date of this incident
23 was the last time he had any contact with the complaining witness and her family, that it
occurred nearly a year before the complaining witness states she last had contact with Rogers,
and requesting the Detectives obtain documentation of this 2010 police incident to verify its
date. When PD Staples, requested documentation of the 2010 police incident, the DPA should
have sought to obtain this documentation from the Detectives to turn it over to the defense to
avoid violating Rogers' Fourteenth Amendment Due Process rights and BRADY. Even if the
thought to obtain this documentation to turn it over to the defense never occurred to DPA Hayes,
shouldn't the DPA want to obtain this documentation to review for himself? To find out if it
contained any relevant information, such as the definitive date of the incident? To compare it
with the complaining witnesses' statements, before proceeding to trial with multiple charges of
Rape of a Child in the First Degree and Child Molestation in the First Degree? An unbiased DPA
seeking to enforce justice and the law, should want to review this documentation of the 2010
police incident, which establishes a specific date on which this incident occurred, and is
unbiased evidence. What did our U.S. Supreme Court say? *A prosecutor's obligation is not to
win all cases it handles, but rather to act impartially to see "that justice shall be done." Berger,
SUPRA. (emphasis added).*

Between March 1, 2016 and January 1, 2017 the Detectives and DPA Hayes obtained and
reviewed documentation of the 2010 police incident and had the ability to request at that time to
preserve and review police reports, 911 call recordings, CAD logs, dispatch call notes, officer
notes and any other evidence related to the 2010 police incident. The value of the police report,
911 call recordings, CAD logs, dispatch call notes, officer notes and any other evidence related
to the 2010 police incident were apparent prior to being destroyed. It was apparent upon
comparing the complaining witness' 2016 statements and Rogers' 2016 statements. Each of these
different forms of documentation and any other documentation of the 2010 police incident would

1 contain the definitive date this incident occurred and would have corroborated, or rebutted and
2 impeached, the testimony of the complaining witness on her statements (regarding having
3 contact with and being sexual abused by Rogers for over a year) that was made. Thus, making
4 documentation of the 2010 police incident both material and exculpatory to Rogers.

5 The Burden Court noted, "In most cases involving the failure to preserve evidence, courts
6 have had to speculate about the exculpatory value of missing evidence." Burden, at 512. Here,
7 the court does not have to speculate about the missing evidence being materially exculpatory to
8 the charges. Rogers and the complaining witness' conflicting statements regarding how long they
9 had contact gives enough to show the court the value and necessity of the destroyed or lost
10 evidence.

11 The second prong of the test is whether the nature of the evidence leaves the defendant
12 unable to obtain comparable evidence by other reasonably available means. There are no other
13 means available to get the destroyed and missing evidence that the state failed to preserve. The
14 date of the 2010 police incident cannot be definitively identified except through police
15 documentation of the incident (e.g. police report, 911 call recordings, CAD logs, dispatch call
16 notes, officer notes, etc...), all of which have been destroyed or lost due to the state's failure to
17 preserve them, and at least one piece of documentation has been destroyed or lost after Detective
18 Hernandez viewed it in 2016 (EXHIBIT F). There is no way to obtain comparable evidence to
19 losing the only documentation: (1) able to definitively identify the date when the 2010 police
20 incident occurred (2) verify Rogers only had contact with the complaining witness for less than 6
21 weeks (3) and refute the allegations that the complaining witness had contact with Rogers and
22 was sexually abused by him for over a year.

23 The destroyed evidence is able to definitively identify the date the 2010 police incident
occurred. This date establishes that the amount of time and contact Rogers and the complaining
witness had together was far less than the complaining witness states and significantly limits the
possibility of the alleged sexual abuse happening, impeaching the complaining witness'
statements. The date of the 2010 police incident would also impeach Ms. Poindexter's statements
regarding when the 2010 police incident occurred. It's also important to note that Ms.
Poindexter's statement of when the 2010 police incident occurred is different than the
complaining witness' and is in agreement with Rogers' statement in regards to there being no
contact between Rogers and the complaining witness or her family for two weeks before the
2010 police incident occurred and no contact at all after this incident occurred. Moreover, this
documentation is the only unbiased evidence able to refute or corroborate the testimony of the
witnesses in this case. The date of the 2010 police incident cannot be definitively identified and
the evidence lost cannot be replaced by any means, due to the state not preserving any one of the
pieces of evidence gathered by the police at the time of the 2010 police incident (e.g. police
report, 911 call recordings, CAD logs, dispatch call notes, officer notes, etc...). Any form of
documentary evidence had obvious value and unmistakably contained materially exculpatory
evidence from the first in person interview between Rogers and both Detective Hernandez and
Detective Phelps, conducted on March 1, 2016.

This objective, unbiased documentation of the 2010 police incident that was in Detective
Hernandez' possession being destroyed or lost and therefore unable to definitively identify a
date, is solely due to the state's failure to preserve the documentation of the 2010 police incident
that was in Detective Hernandez' possession. That documentation of the 2010 police incident, is
exculpatory to the 3 convictions of Rape of a Child in the First Degree and the conviction of
Child Molestation in the First Degree. Similar to Burden, even if the state were to stipulate that

1 documentation of the 2010 police incident (e.g. police report, 911 call recordings, CAD logs,
2 dispatch call notes, officer notes, etc...) definitively identified a date 6 weeks after the
3 complaining witness and her family began living with Rogers and his family, Rogers would be
4 prevented from presenting a complete and effective defense with that stipulation. Therefore, like
5 the Court in Burden, the Court here too must find that is not a sufficient comparable alternative
6 to the destroyed evidence. There was no comparable evidence reasonably available to the
7 defendant to present a complete defense at trial to these convictions. The second prong for the
8 test of materially exculpatory has been met. Accordingly, the two-prong test has been met for the
9 documentation of the 2010 police incident that was in Detective Hernandez' possession, on all 3
10 convictions of Rape of a Child in the First Degree and the conviction of Child Molestation in the
11 First Degree.

12 Defense moves the Court to follow the rulings of the Washington State Supreme Court,
13 and to dismiss the convictions with prejudice against Rogers as a violation of his 14th
14 Amendment Due Process rights, and a violation of BRADY, based on the state's failure to
15 preserve materially exculpatory evidence. The suppression of the destroyed evidence prevented
16 Rogers from getting a fair trial, blocked his ability to present a complete defense, and violated
17 his rights protected by the constitution under due process.

18 The court need find only one single piece of evidence that was not preserved by the state
19 to be materially exculpatory with apparent value before the evidence was destroyed. Here, it is
20 irrefutable that documentation of the 2010 police incident that was in Detective Hernandez'
21 possession is materially exculpatory and the value was apparent before it was destroyed or lost.
22 Accordingly, there is no need for defense to prove any bad faith on the part of the state.
23 Additionally, there are police report, 911 call recording, CAD log, and officer notes that the state
also did not preserve, which defense argues are also materially exculpatory. Regardless of the
fact that there are multiple pieces of evidence destroyed, if this Court finds the documentation of
the 2010 police incident that was in Detective Hernandez' possession is materially exculpatory
because there is no comparable evidence defense can obtain by reasonable means, the Court has
sufficient findings of BRADY and Due Process violations. The Court must therefore dismiss the
case with Prejudice.

In the alternative PD Staples misrepresented Rogers. The issue before the Court is the
intentional failure to disclose documents that defense counsel being given knowledge of the
unavailability of documentation of the 2010 police incident that was in Detective Hernandez'
possession before the jury returned a verdict, yet failed to divulge to Rogers and file a motion to
the trial court for its production or dismissal of the case under BRADY. Having knowledge of
said undivulged information was not ineffective assistance of counsel, but a blatant
misrepresentation that inherently caused a miscarriage of justice and/or was crucial to be
considered at trial allowing defendant his right to present a defense. *Failing to divulge and file a
motion to the trial court for the missing evidence's production or dismissal of the case under
BRADY upon the prosecutor acknowledging its existence and not being able to produce it to the
defense is unlikely to be part of a reasonable strategy, particularly when the missing evidence is
the only unbiased evidence from the time in question and it corroborates Rogers' story.*
Furthermore, the derelicted duties of defense counsel's actions violates the Rules of Professional
Conduct (RPC) and as in this case is and was actually and substantially prejudicial to Rogers'
right to fair trial.

This was discovered when defendant upon appeal requested his entire case file from
defense counsel. After 22 months of due diligence with discovering this critical and material

1 documentation causing both the State and Defense Counsel to exercise in bad faith in bringing
2 defendant to trial in order to bring forth conviction. This issue is ripe for review and made under
3 the fundamental fairness doctrine.

4 The destruction of evidence issue in this case involves multiple pieces of evidence the
5 state failed to preserve: police report, 911 call recordings, CAD logs, dispatch call notes, officer
6 notes and any other evidence related to the 2010 police incident, specifically documentation of
7 the 2010 police incident that was in Detective Hernandez' possession after Rogers requested this
8 documentation in 2016 before the evidence was destroyed or lost. Case law is clear that the loss
9 of any one of the materially exculpatory pieces of evidence, without a reasonable way for
10 defense to obtain comparable evidence, is sufficient to justify dismissal, and requires dismissal
11 of the convictions against Rogers with prejudice.

12 Because exculpatory evidence was lost from police sources, and the nature of the
13 evidence leaves the defendant unable to obtain comparable evidence, defense is unable to present
14 a complete defense. Because the value of the materially exculpatory evidence was apparent prior
15 to its destruction, the Court need not consider whether the state acted in bad faith. Defense
16 respectfully moves the court to dismiss these convictions with prejudice under both the Federal
17 and Washington State Constitutions for due process violations for failure to preserve evidence
18 under BRADY and denying Rogers his right to present a defense.

19 C. Aggravating Factors

20 The facts of an aggravating factor must be proved to the jury beyond a reasonable doubt.
21 RCW 9.94A.537(3); State v. Zigar, 166 Wn. App. 597, 601, 270 P.3d 625 (2012). The challenge
22 to the jury's special verdict of an aggravating factor is reviewed under the same standard as a
23 claim of insufficient evidence to support the elements of the crime. State v. Stubbs, 170 Wn. 2d
117, 123, 240 P.3d 143 (2010). It must be determined if any rational jury could have found the
defendant guilty of the aggravating factors beyond a reasonable doubt. State v. Ramirez, Wash.
App. LEXIS 2437 (October 24, 2017). In this instant case, petitioner was found guilty of two
aggravating factors RCW 9.94A.535(n) and RCW 9.94A.535(g) (Exhibits A and B).

24 i. RCW 9.94A.535(n)

25 This aggravating factor found by the jury is: "The defendant used his or her position of
26 trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense"
27 RCW 9.94A.535(n). In the trial testimony of Amanda Poindexter, the mother of the complaining
28 witness, the prosecution presented evidence of the petitioner being in a position of trust as a
29 babysitter only in relation to the First Degree Child Molestation count dated January 1, 2008, to
30 December 31, 2008 (count 1). Petitioner was not found guilty of count 1 and this count was
31 dismissed (Exhibit A). In relation to all remaining counts (counts 2 – 6), each dated January 1,
32 2010 to December 31, 2010, on cross-examination, Mrs. Poindexter stated that the plaintiff had
33 no responsibilities when it came to her children:

34 Q: Okay. So and you testified about the arrangements that -- part of your motivation in
35 getting this night job was so that you didn't have to pay for childcare during the day?

36 A: And I didn't have to worry about anybody else watching my kids during the daytime.

37 Q: Right.

38 A: I could watch them during the daytime.

39 Q: Right. And you testified that school on school nights, bedtime's nine -- or you said

1 before school time or during school week bedtime for them was 9:00, and so they'd
2 already be in bed by the time you left for work?

3 A: Correct.

4 Q: Okay. Including Jazmyne?

5 A: Correct.

6 Q: Now, I was a little confused about your -- your testimony about Daryl because the
7 kids were in bed, so when you were working, you didn't have any specific responsibilities
8 that related to the kids, other than, say, not -- make sure the house didn't burn down?

9 A: Correct.

10 Therefore, as it relates to counts 2 – 6, there was no evidence presented for a finding that
11 petitioner violated a position of trust. Further, it cannot be reasonably inferred that a position of
12 trust carried over from count 1 relating to 2008, as more than 2 years would have elapsed without
13 contact between the petitioner and complaining witness. And more importantly, the jury did not
14 find the petitioner guilty of count 1.

15 ii. RCW 9.94A.535(g)

16 This aggravating factor found by the jury is "The offense was part of an ongoing pattern
17 of sexual abuse of the same victim under the age of eighteen years manifested by multiple
18 incidents over a prolonged period of time" RCW 9.94A.535(g). The term prolonged period of
19 time is ambiguous and does not define how much time is a prolonged period. As each act
20 representing each count petitioner was convicted of (count 2 – 5) was alleged to happen over a
21 short period of time, during one uninterrupted sequence of conduct, it's impossible for both to be
22 true. As each of the counts represent the same criminal conduct, these acts could not have
23 occurred over a prolonged period of time.

In conclusion the aggravating factors have not been proven beyond a reasonable doubt
there for petitioner request that the case be remanded, and he be resentenced without the
inclusion of aggravating factors in the judgement.

15 D. Due Process/ Lack of Jurisdiction

16 Petitioner contends that he did not receive due process due to the state's lack of
17 jurisdiction during a significant portion of the charging period for all counts 1 – 6. The
18 Washington State Supreme Court has clarified that "jurisdiction is comprised of only two
19 components: jurisdiction over the person and subject matter jurisdiction." In re Marriage of
20 Buecking, 179 Wn.2d 438, 447, 316 P.3d 999 (2013)(citing State v. Posey, 174 Wn.2d 131, 138,
21 272 P.3d 840 (2012)). This determines whether or not the courts have the authority to render a
22 judgment in the case.

23 In this particular case, no Washington State Court has jurisdiction, because it does not
hold the authority to adjudicate matters that occurred outside of the State of Washington. The
petitioner was charged with six counts occurring over two separate charging periods. Count 1
had a charging period of January 1, 2008, to December 31, 2008, and counts 2 – 6 had a charging
period of January 1, 2010, to December 31, 2010 (Exhibit A). Prosecution witness Amanda
Poindexter, the mother of the complaining witness, testifies that she and all of her children,
including the complaining witness, moved from the State of Washington to Alaska on November
6, 2008. 3 VRP at page 317 line 18 and page 329 line 9. This same witness would later testify
that she and all of her children, including the complaining witness, moved from Alaska to the
State of Washington on either March 10, 2010, or April 10, 2010. 3 VRP at page 333 line 24.

1 This firmly established that the complaining witness was not in the State of Washington during
2 the last two months of count 1's charging period, nor was the complaining witness in the State
3 of Washington for the first two or three months of counts 2 – 6's charging period. The charging
4 period cannot predate jurisdiction. Since the charging period started prior to the complaining
5 witness being in the State of Washington, the State of Washington did not have jurisdiction over
6 any portion of the charging period where the complaining witness was not in the State of
7 Washington.

8 Petitioner went to trial with the charging periods listed above and was found guilty of
9 counts 2 – 5, each of which contained charging periods of January 1, 2010, to January 31, 2010
10 (Exhibit A). On the jury's verdict forms for counts 2 – 5, the jury did not identify when during
11 the charging period each act that made up the offense occurred (Exhibits A and B). Meaning that
12 the jury could have found that the acts resulting in convictions for counts 2-5 occurred on
13 January 30, 2010, February 23, 2010, March 9, 2010, or any other date between January 1, 2010,
14 and March 10, 2010. All of these dates occurred before the State of Washington had jurisdiction
15 in this case. Because the jury did not identify whether the acts found constituting each conviction
16 occurred before or after March 10, 2010, it is possible petitioner was illegally convicted based on
17 acts that occurred before the State of Washington had jurisdiction.

18 In State v. Aho, a previous case with similar circumstances, the Washington State
19 Supreme Court ruled that when the defendant was convicted of crimes with a charging period
20 that began with dates that predate the effective statute and the jury did not specify when the acts
21 resulting in the conviction occurred, it's possible the defendant was illegally convicted based
22 upon acts that occurred before the effective date of the statute. State v. Aho, 137 Wn.2d 736, 975
23 P.2d 512 (1999). Similarly, in this instant case, the petitioner was convicted of crimes with a
charging period that starts with dates that predate the State of Washington's jurisdiction and the
jury did not specify when the acts resulting in the conviction occurred, therefore it is possible the
petitioner too, was illegally convicted, based on acts occurring before the State of Washington's
jurisdiction began.

The issue in Aho was that the charging period began with dates that predated the statute
effective date and, because the jury never specified when the acts constituting the convictions
occurred, Aho was potentially convicted of acts occurring before the statute became effective.
Here in this case, the issue is that the charging period begins with dates that predate the State of
Washington's jurisdiction and because the jury never specified when the acts constituting the
convictions occurred, the petitioner was potentially convicted of acts occurring before the State
of Washington had jurisdiction. In conclusion the petitioner's due process was violated as
petitioner could have been convicted for crimes during a time when the State of Washington did
not have jurisdiction. Therefore, petitioner request that the case be dismissed with prejudice for
violation of due process.

III. Conclusion

There has been a failure on the state to meet its burden of proof to include the 2005
burglary in the first degree (case no.: 05800471-7) as part of the petitioner's criminal history and
it should not have been included. As well, each of the convictions have been shown to have the
necessary elements to qualify as "same criminal conduct" under RCW 9.94A.589(1)(a); and
should have been counted as 1 crime in the petitioner's offender score. The issue is in this case
involving multiple pieces of evidence the state failed to preserve, to include: police report, 911
call recordings, CAD logs, dispatch call notes, officer notes and any other evidence related to the

1 2010 police incident, specifically documentation of the 2010 police incident that was in
2 Detective Hernandez' possession after Rogers requested this documentation in 2016 before the
3 evidence was destroyed or lost. The destruction of evidence in this case also shows evidence of a
4 Brady Violation. Case law is clear that the loss of any one of the materially exculpatory pieces of
5 evidence, without a reasonable way for defense to obtain comparable evidence, is sufficient to
6 justify dismissal. This leaves the petitioner unable to present a complete defense, and requires
7 dismissal of the convictions against petitioner with prejudice.

8 The state also failed to prove beyond a reasonable doubt any aggravating factors; while
9 also violating the petitioners due process as petitioner could have been convicted for crimes
10 when the State of Washington did not have jurisdiction. Therefore, petitioner requests that the
case be remanded and resentenced and/or dismissed with prejudice.

Dated this 2ND day of November, 2022.

DARYL ROGERS
Daryl Rogers
DOC # 412163
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Exhibits

Exhibit A: Judgement and Sentencing

Exhibit B: Finding of Fact and Conclusions of Law regarding Double Jeopardy
and Scoring

Exhibit C: Affidavit of Jeff Staples

Exhibit D: John Visser CAD Log request response

Exhibit E: Daryl Rogers CAD Log request response

Exhibit F: Email from DPA Colin Hayes to PD Jeff Staples

Exhibit G: Affidavit of Daryl Rogers

Exhibit A

Jeff Staples

S9



FILED

JAN 23 2019 4:55

Scott G. Weber, Clerk, Clark Co.

Superior Court of Washington
County of Clark

State of Washington, Plaintiff,

vs.

DARYL ROGERS, aka DARYL CRAIG
ROGERS,
Defendant.

SID: WA21967548

If no SID, use DOB: 2/7/1990

No. 17-1-00097-3

Felony Judgment and Sentence --
Prison

☒ RCW 9.94A.507 Prison Confinement
(Sex Offense and Kidnapping of a Minor)
(FJS)

☒ Clerk's Action Required, para 2,1, 4.1, 4.3a, 4.3b,
5.2, 5.3, 5.5 and 5.7

☐ Defendant Used Motor Vehicle

☐ Juvenile Decline ☐ Mandatory ☐ Discretionary

I. Hearing

1.1 The court conducted a sentencing hearing this date, December 21, 2018, the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon

☐ guilty plea ☒ jury-verdict 11/2/2018 ☐ bench trial:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
02	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	1/1/2010 to 12/31/2010
03	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	FA	1/1/2010 to 12/31/2010
04	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	1/1/2010 to 12/31/2010
05	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	1/1/2010 to 12/31/2010

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

☐ Additional current offenses are attached in Appendix 2.1a.

☒ The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.507.

The jury returned a special verdict or the court made a special finding with regard to the following:

Felony Judgment and Sentence (FJS) (Prison)

(Sex Offense and Kidnapping of a Minor Offense)

(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))

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001
CRR

- ☐ For crime(s) charged in Count(s) _____ domestic violence as defined in RCW 10.99.020(5) was pled and proved.
- ☐ For crime(s) charged in Count(s) _____ the defendant and the victim are "family or household members" as defined in RCW 10.99.020(3).
- ☐ For crime(s) charged in Count(s) _____ the defendant and the victim are "family or household members" as defined in RCW 9A.36.041(4).
- ☐ The defendant used a firearm in the commission of the offense in Count _____. RCW 9.94A.825, 9.94A.533.
- ☐ The defendant used a deadly weapon other than a firearm in committing the offense in Count _____. RCW 9.94A.825, 9.94A.533.
- ☐ Count _____, is aggravated murder in the first degree committed while the defendant was ☐ under 16 years of age ☐ 16 or 17 years of age when the offense was committed.
- ☐ Count _____, was committed while the defendant was under 18 years of age and the time of confinement is over 20 years.
- ☐ The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A.839.
- ☐ In count _____ an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime. RCW 9.68A.100, RCW 9.68A.101, or RCW 9.68A.102, Laws of 2013, ch. 9, §1.
- ☐ The offense was predatory as to Count _____. RCW 9.94A.836.
- ☐ The victim was under 15 years of age at the time of the offense in Count _____. RCW 9.94A.837.
- ☐ The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.
- ☐ The defendant acted with sexual motivation in committing the offense in Count _____. RCW 9.94A.835.
- ☐ This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- ☐ In count _____ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A. ____.
- ☐ Count _____, Violation of the Uniform Controlled Substances Act (VUCSA), RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- ☐ The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture in Count _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- ☐ Count _____ is a criminal street gang-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- ☐ Count _____ is the crime of unlawful possession of a firearm and the defendant was a criminal street gang member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.
- ☐ The defendant committed ☐ vehicular homicide ☐ vehicular assault proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- GY** ☐ In Count _____, the defendant had (number of) _____ passenger(s) under the age of 16 in the vehicle. RCW 9.94A.533.

- ☐ Count _____ involves attempting to elude a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- ☐ In Count _____ the defendant has been convicted of assaulting a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- ☐ Count _____ is a felony in the commission of which the defendant used a motor vehicle. RCW 46.20.285.
- ☐ The defendant has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.
- ☐ Reasonable grounds exist to believe the defendant is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. RCW 9.94B.080
- ☐ In Count _____, assault in the 1st degree (RCW 9A.36.011) or assault of a child in the 1st degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- ☐ Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- ☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

Crime	Cause Number	Court (county & state)	DV* Yes
1.			

*DV: Domestic Violence was pled and proved

- ☐ Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv.	Type of Crime	DV* Yes
1 BURGLARY IN THE FIRST DEGREE	4/4/2005	4/28/2005	Clark County Superior Court (Clark, WA)	J	Violent class A felony	
2 ATTEMPTED RESIDENTIAL BURGLARY	2/25/2007	5/23/2007	Clark County Superior Court (Clark, WA)	J	Class C felony	

*DV: Domestic Violence was pled and proved

- ☐ Additional criminal history is attached in Appendix 2.2.
- ☐ The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- ☐ The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- ☐ The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.
- ☐ The defendant has previously had DNA collected in this state pursuant to a previous conviction. RCW 43.43.7541.

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
02	8	XII	209 MONTHS to 277 MONTHS	n/a	209 MONTHS to 277 MONTHS	LIFE
03	8	X	129 MONTHS to 171 MONTHS	n/a	129 MONTHS to 171 MONTHS	LIFE
04	8	XII	209 MONTHS to 277 MONTHS	n/a	209 MONTHS to 277 MONTHS	LIFE
05	8	XII	209 MONTHS to 277 MONTHS	n/a	209 MONTHS to 277 MONTHS	LIFE

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VII) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (AIF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16.

☐ Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: _____

2.4 ☐ **Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

☐ below the standard range for Count(s) _____

☐ above the standard range for Count(s) _____

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury, by special interrogatory.

☐ within the standard range for Count(s) _____ but served consecutively to Count(s) _____

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

☐ In the case of more than one aggravating factor, the Court finds that the same sentence would be imposed if any one of the aggravating factors is not upheld on appeal.

2.5 Ability to Pay Legal Financial Obligations.

☒ The defendant is "indigent" pursuant to RCW 10.101.010(3)(a)-(c) because:

☐ The defendant receives public assistance as defined in RCW 10.101.010(3)(a).

☐ The defendant is involuntarily committed to a public mental health facility.

☒ The defendant receives an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level.

☐ The defendant is not "indigent" as defined in RCW 10.101.010(3)(a)-(c) and therefore the court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources, the nature of the burden that payment of costs will impose, and the likelihood that the defendant's status will change. The court finds:

☐ That the defendant has the ability to pay the legal financial obligations imposed herein. RCW 10.01.160.

☐ That the defendant does not presently have the ability to pay, but is anticipated to be able to pay financial obligations in the future. RCW 10.01.160.

☐ That the defendant does not have the ability to pay and is not anticipated to be able to pay financial obligations in the future. RCW 10.01.160.

☐ Other: _____

☐ The following extraordinary circumstances exist that make restitution inappropriate. (RCW 9.94A.753):

☐ The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

2.6 ☐ **Felony Firearm Offender Registration.** The defendant committed a felony firearm offense as defined in RCW 9.41.010.

☐ The court considered the following factors:

☐ the defendant's criminal history.

☐ whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

☐ evidence of the defendant's propensity for violence that would likely endanger persons.

☐ other: _____

☐ The court decided the defendant ☐ should ☐ should not register as a felony firearm offender.

III. Judgment

3.1 The defendant is *guilty* of the Counts and Charges listed in Paragraph 2.1.

3.2 ☒ The court *dismisses* Counts 1 and 5 in the charging document without prejudice on motion of the State.

IV. Sentence and Order

It is ordered:

4.1 **Confinement.** The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

_____ months on Count

_____ months on Count

_____ months on Count

_____ months on Count

☐ The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

☐ The confinement time on Count _____ includes _____ months as enhancement for ☐ firearm ☐ deadly weapon ☐ sexual motivation ☐ VUCSA in a protected zone ☐ manufacture of methamphetamine with juvenile present ☐ sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 277

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

This sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)): _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) **Confinement.** RCW 9.94A.507 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count	02	minimum term	<u>277</u> months	maximum term	Statutory Maximum
Count	03	minimum term	<u>171</u> months	maximum term	Statutory Maximum

Count	04	minimum term	<u>277</u> months	maximum term	Statutory Maximum
Count	05	minimum term	<u>277</u> months	maximum term	Statutory Maximum

(c) **Confinement.** RCW 10.95.030 (Aggravated murder and under age 18.) The court orders the following:

Count _____ minimum term: _____ maximum term: _____

(d) **Credit for Time Served:** The defendant shall receive credit for eligible time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.

(c) ☐ **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

4.2 Community Custody. (To determine which offenses are eligible for or required for community placement or community custody see RCW 9.94A.701)

(A) The defendant shall be on community placement or community custody for the longer of:

- (1) the period of early release. RCW 9.94A.728(1)(2); or
- (2) the period imposed by the court, as follows:

Count(s) _____, 36 months for Serious Violent Offenses
 Count(s) _____, 18 months for Violent Offenses
 Count(s) _____, 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)
 Count(s) _____, _____ months. RCW 9.94A.701(9)

(Sex offenses, only) For count(s) 02, 03, 04, 05, sentenced under RCW 9.94A.507, for any period of time the defendant is released from total confinement before the expiration of the statutory maximum.

The total time of incarceration and community supervision/custody shall not exceed the statutory maximum for the crime.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) for sex offenses, submit to electronic monitoring if imposed by DOC; and (10) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody. For sex offenders sentenced under RCW 9.94A.709, the court may extend community custody up to the statutory maximum term of the sentence.

The court orders that during the period of supervision the defendant shall:

- ☐ not possess or consume alcohol.
☐ have no contact with: _____
☐ remain ☐ within ☐ outside of a specified geographical boundary, to wit: _____

☐ not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).

- ☐ participate in an education program about the negative costs of prostitution.
☐ participate in the following crime-related treatment or counseling services: _____

- ☐ undergo an evaluation for treatment for ☐ domestic violence ☐ chemical dependency ☐ mental health
☐ anger management, and fully comply with all recommended treatment. _____
☐ comply with the following crime-related prohibitions: _____

☒ Other conditions: all conditions listed in Appendix A (attached).

(C) For sentences imposed under RCW 9.94A.507, the Indeterminate Sentence Review Board may impose other conditions (including electronic monitoring if DOC so recommends). In an emergency, DOC may impose other conditions for a period not to exceed seven working days.


Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

(D) If the defendant committed the above crime(s) while under age 18 and is sentenced to more than 20 years of confinement:

- (i) As long as the defendant's conviction is not for aggravated first degree murder or certain sex crimes, and the defendant has not been convicted of a crime committed after he or she turned 18 or committed a disqualifying serious infraction as defined by DOC in the 12 months before the petition is filed, the defendant may petition the Indeterminate Sentence Review Board (Board) for early release after the defendant has served 20 years.
- (ii) If the defendant is released early because the petition was granted or by other action of the Sentence Review Board, the defendant will be subject to community custody under the supervision of the DOC for a period of time determined by the Board, up to the length of the court-imposed term of incarceration. The defendant will be required to comply with any conditions imposed by the Board.
- (iii) If the defendant violates the conditions of community custody, the Board may return the defendant to confinement for up to the remainder of the court-imposed term of incarceration.

4.3a Legal Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE

PCV	\$ 500.00	Victim assessment (mandatory)	RCW 7.68.035
PDV	\$ _____	Domestic Violence assessment	RCW 10.99.080
	\$ _____	Violation of a DV protection order (\$15 mandatory fine)	RCW 26.50.110
FRC		Criminal filing fee, (mandatory, however waive if Court found defendant to be indigent pursuant to RCW 10.101.010(3)(a)-(c) in section 2.5 above).	RCW 36.18.020.
CRC	\$ _____	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Witness costs \$ _____ WFR	
		Sheriff service fees \$ _____ SFR/SFS/SFW/WRF	
		Jury demand fee \$ _____ JFR	
		Extradition costs \$ _____ EXT	

Felony Judgment and Sentence (FJS) (Prison)
 (Sex Offense and Kidnapping of a Minor Offense)
 (RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))
 Page 7 of 16

Other \$ _____

PUB \$ _____ Fees for court appointed attorney RCW 9.94A.760

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/ATH \$ _____ ☐ Fine RCW 9A.20.021
☐ VUCSA fine RCW 69.50.430
☐ Deferred due to indigency

CDF/LDI/FCD S _____ Drug enforcement Fund # ☐ 1015 ☐ 1017 (TF) RCW 9.94A.760

NTF/SAD/SDI

CLF S _____ Crime lab fee ☐ suspended due to indigency RCW 43.43.690

RM S ~~_____~~ DNA collection fee (mandatory unless DNA previously collected by prior conviction in this state). RCW 43.43.7541

FPV S _____ Specialized forest products RCW 76.48.140

PPI S _____ Trafficking/Promoting prostitution/Commercial sexual abuse of minor fee (may be reduced by no more than two thirds upon a finding of inability to pay.)
RCW 9A.40.100, 9A.88.120, 9.68A.105

S _____ Fee for Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct (\$1,000 fee for each separate conviction) RCW 9.68A.070

S _____ Other fines or costs for: _____

DEF S _____ Emergency response costs (\$1,000 maximum, \$2,500 max. effective Aug. 1, 2012) RCW 38.52.430

Agency: _____

RTN/RJN \$607.34 Restitution to: CRIME VICTIMS COMPENSATION PROGRAM (\$607.34)
(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

\$ _____ Total RCW 9.94A.760

☒ The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☒ shall be set by the prosecutor.

☐ is scheduled for _____ (date).

☐ The defendant waives any right to be present at any restitution hearing (sign initials): _____.

☒ Restitution Schedule attached.

☐ Restitution ordered above shall be paid jointly and severally with:

RJN	Name of other defendant	Cause Number	Victim's name	Amount-\$

☐ The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

☐ All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____. RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

- ☐ The court orders the defendant to pay costs of incarceration at the rate of \$_____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.).

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

- 4.3b ☐ **Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$_____.

- 4.4 **DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

- ☒ **HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 **No Contact:**

- ☒ The defendant shall not have contact with J.R.O. (female, DOB 6/30/1999) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life (which does not exceed the maximum statutory sentence).

- ☒ The defendant is excluded or prohibited from coming within:

☐ 500 feet ☐ 880 feet ☒ 1000 feet of:

☒ J.R.O. (female, DOB 6/30/1999) (name of protected person(s))'s

☒ home/ residence ☒ work place ☒ school

☒ (other location(s)) person

☐ other location _____.

for life (which does not exceed the maximum statutory sentence).

- ☒ A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed concurrent with this Judgment and Sentence.

4.6 **Other:** _____

- 4.7 **Off-Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

- 4.8 **Exoneration:** The Court hereby exonerates any bail, bond and/or personal recognizance conditions. Unit, if not on Community Custody for supervision.

V. Notices and Signatures

- 5.1 Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 Community Custody Violation.**
(a) If you are subject to a violation hearing and DOC finds that you committed the violation, you may receive a sanction of up to 30 days of confinement. RCW 9.94A.633(1).
(b) If you have not completed your maximum term of total confinement and you are subject to a violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.633(2)(a).
- 5.5a Firearms.** You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040 and RCW 9.41.047.
- 5.5b ☐ Felony Firearm Offender Registration.** The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Sex and Kidnapping Offender Registration Laws of 2010, ch. 367 § 1, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.128, you are required to register.

If you are a resident of Washington, you must register with the sheriff of the county of the state of Washington where you reside. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of the state of Washington where you will be residing.

While in custody, if you are approved for partial confinement, you must register when you transfer to partial confinement with the person designated by the agency that has jurisdiction over you. You must also register within three business days from the end of partial confinement or release from confinement with the sheriff of the county where you reside.

If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your

school, place of employment, or vocation. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of your school, where you are employed, or where you carry on a vocation.

2. Offenders Who are New Residents, Temporary Residents, or Returning Washington Residents: If you move to Washington or if you leave this state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state. If you are visiting and intend to reside or be present 10 or more days in Washington, then you must register the location where you plan to stay or your temporary address with the sheriff of each county where you will be staying within three business days of your arrival.

3. Change of Residence Within State: If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you change your residence to a new county within this state, you must register with the sheriff of the new county within three business days of moving. Also within three business days, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you last registered.

4. Leaving the State or Moving to Another State: If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. If you move out of the state, you must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. Travel Outside the United States: If you intend to travel outside the United States, you must provide signed written notice of the details of your plan to travel out of the country to the sheriff of the county where you are registered. Notice must be provided at least 21 days before you travel. Notice may be provided to the sheriff by certified mail, with return receipt requested, or in person.

If you cancel or postpone this travel, you must notify the sheriff within three days of canceling or postponing your travel or on the departure date you provide in your notice, whichever is earlier.

If you travel routinely across international borders for work, or if you must travel unexpectedly due to a family or work emergency, you must personally notify the sheriff at least 24 hours before you travel. You must explain to the sheriff in writing why it is impractical for you to comply with the notice required by RCW 9A.44.130(3).

6. Notification Requirement When Enrolling In or Employed by a Public or Private Institution of Higher Education or Common School (K-12): You must give notice to the sheriff of the county where you are registered within three business days:

- i) before arriving at a school or institution of higher education to attend classes;
- ii) before starting work at an institution of higher education; or
- iii) after any termination of enrollment or employment at a school or institution of higher education.

7. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within three business days of release in the county where you are being supervised. If you do not have a residence at the time of your release from custody. Within three business days after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register with the sheriff of the new county not more than three business days after

entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

8. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within three business days of the entry of the order. RCW 9A.44.130(7).

- 5.7 ☐ **Department of Licensing Notice:** The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. **Clerk's Action** - The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR Information):**
- ☐ Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of _____.
 - ☐ No BAC test result.
 - ☐ BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
 - ☐ Drug Related. The defendant was under the influence of or affected by any drug.
 - ☐ THC level was _____ within two hours after driving.
 - ☐ Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.

Vehicle Info.: ☐ Commercial Veh.; ☐ 16 Passenger Veh.; ☐ Hazmat Veh.

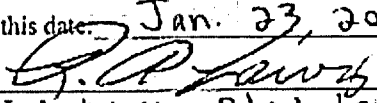
5.8 ☐ **Department of Licensing Notice - Defendant under age 21 only.**


Count _____ is (a) a violation of RCW chapter 69.41 [Legend drug], 69.50 [VUCSA], or 69.52 [Imitation drugs], and the defendant was under 21 years of age at the time of the offense OR (b) a violation under RCW 9A.1.040 [unlawful possession of firearm], and the defendant was under the age of 18 at the time of the offense OR (c) a violation under RCW chapter 66.44 [Alcohol], and the defendant was under the age of 18 at the time of the offense, AND the court finds that the defendant previously committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.

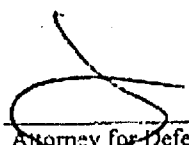
Clerk's Action - The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.265


5.9 **Other:** _____

Done in Open Court and in the presence of the defendant this date: Jan. 23, 2014


Judge/Print Name Robert Lewis


Deputy Prosecuting Attorney
WSDA No. 35387
Print Name: Colin P. Hayes


Attorney for Defendant
WSBA No. 40738
Print Name: Jeff Staples


Defendant
Print Name:
DARYL ROGERS

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: MAYOR 002B

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Vancouver, Washington on (date): _____

Interpreter

Print Name

I, Scott G. Weber, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

Witness my hand and seal of the said Superior Court affixed this date: _____

Clerk of the Court of said county and state, by: _____, Deputy Clerk

Identification of the Defendant

DARYL ROGERS

17-1-00097-3

SID No: WA21967548

Date of Birth: 2/7/1990

(If no SID take fingerprint card for State Patrol)

FBI No. 47231DC7

Local ID No.

PCN No. _____

Other _____

Alias name, DOB: , aka DARYL CRAIG ROGERS, DARYL CRAIG ROGERS

Race: B

Ethnicity:

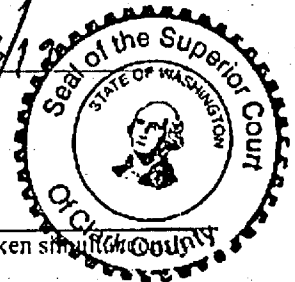
Sex: M

Fingerprints: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court, Deputy Clerk

Cassie B...

Dated: 1/23/17



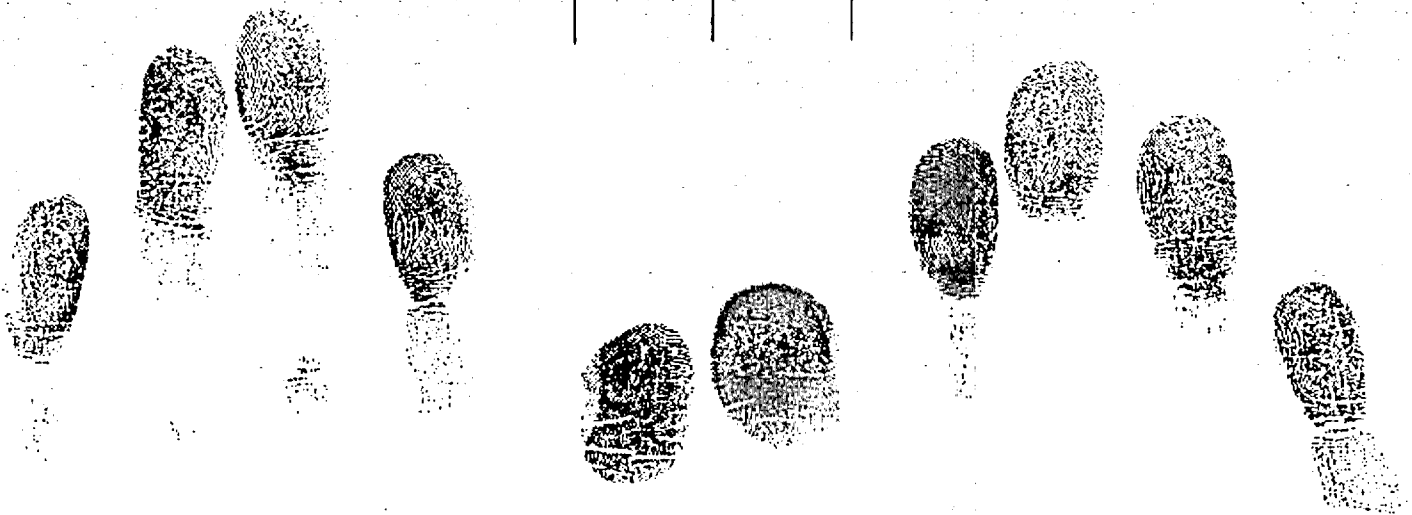
The defendant's signature: *DARYL ROGERS*

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously



Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A 500, .505)(WPF CR 84.0400 (12/2017))
Page 14 of 16

"APPENDIX A"

CONDITIONS OF SENTENCE AND COMMUNITY CUSTODY

1. You shall commit no law violations. You shall notify your community corrections officer within 48 hours of any arrest or citation for an alleged violation of the law.
2. You shall not have any direct or indirect contact with the victim(s), including but not limited to personal, verbal, telephonic, written, or through a third person. You shall not come within one-thousand (1,000) feet of victim's person, home/residence, work place, school, or place of employment. These conditions are for the statutory maximum sentence of life, and shall also apply during any period of incarceration.

Additionally: ☒ a Sexual Assault Protection Order for the maximum period per RCW 7.90.150(6)(c).

Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order.

3. You shall not enter into or frequent video game parlors, playgrounds, parks, amusement parks, skate parks, public swimming pools, skating rinks, school grounds, malls, and any other areas routinely used by minors under the age of sixteen years as areas of play/recreation.
4. You shall not have any contact with minors under the age of sixteen years without prior approval of DOC and your sexual deviancy treatment provider.
5. You shall not possess or consume alcohol without prior approval from DOC and all treatment providers. RCW 9.94A.703(3)(e).
6. You shall submit to urine, breath, PBT/BAC, or other monitoring whenever requested to do so by your community corrections officer to monitor compliance with abstention from alcohol and non-prescribed controlled substances.
7. You shall obtain an evaluation for sexual deviancy conducted by a Washington State certified sexual deviancy treatment provider approved by DOC. You shall comply and cooperate with any recommended treatment. You shall not change sex offender treatment providers without notifying DOC and, if DOC objects to the change, then you must first obtain court approval after a hearing. "Cooperate with" means you shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity. You shall comply with all requirements, restrictions, and rules of all recommended treatment program(s).
8. The sex offender therapist shall submit quarterly reports on your progress in treatment to DOC. The quarterly report shall reference the treatment plan and include the following, at a minimum: dates of attendance, your compliance with requirements, treatment activities, and your relative progress in treatment.

9. You shall, at your own expense, submit to polygraph examinations at the request of DOC. Such exams will be used to ensure compliance with the conditions of community custody and of your treatment program(s).
10. You shall not possess, use, access, or view any sexually explicit material as defined by RCW 9.68.130(2) unless given prior approval by DOC and your sexual deviancy treatment provider.
11. You shall not hold any position of trust or authority over minor children without prior approval of DOC and your sexual deviancy treatment provider.
12. You shall not enter into a dating relationship with another person who has minor children in their care or custody without prior approval of DOC and your sexual deviancy treatment provider.
13. You shall register as a sex offender as required under RCW 9A.44.130.
14. You may not reside within eight hundred eighty (880) feet of the facilities and grounds of a public or private school. RCW 9.94A.030; 9.94A.703(1)(c).
15. As soon as possible after sentencing, you shall undergo pretest counseling, Human Immunodeficiency Virus (HIV) testing, and posttest counseling at the direction of the Clark County Health Department as required by RCW 70.24.340. You shall contact the Clark County Health Department after sentencing or release from custody, whichever occurs last, to schedule an appointment for the counseling and testing. To schedule this appointment, you may call (360)397-8086.
16. You shall comply with any conditions imposed by DOC under RCW 9.94A.704, RCW 9.94A.703(1)(b).
17. You shall comply with all conditions listed in RCW 9.94A.703(2).

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

v.

DARYL ROGERS,

Defendant.

SID: WA21967548

DOB: 2/7/1990

NO. 17-1-00097-3

**WARRANT OF COMMITMENT TO STATE
OF WASHINGTON DEPARTMENT OF
CORRECTIONS**

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
02	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	1/1/2010 to 12/31/2010
03	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	1/1/2010 to 12/31/2010
04	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	1/1/2010 to 12/31/2010
05	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	1/1/2010 to 12/31/2010

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.02, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of:

WARRANT OF COMMITMENT

Page 1

017

COUNT	CRIME	TERM
02	RAPE OF A CHILD IN THE FIRST DEGREE	277 Months
03	CHILD MOLESTATION IN THE FIRST DEGREE	171 Months
04	RAPE OF A CHILD IN THE FIRST DEGREE	277 Months
05	RAPE OF A CHILD IN THE FIRST DEGREE	277 Months

These terms shall be served concurrently to each other unless specified herein:

Department of Corrections to determine any credit for time served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE:

SCOTT G. WEBER, Clerk of the
Clark County Superior Court

By:

Deputy

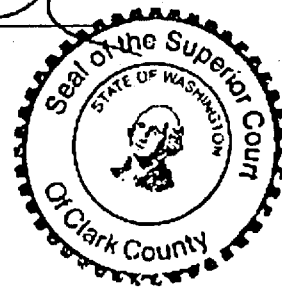


Exhibit B

FILED

JAN 23 2019 4:43

Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

vs.

DARYL ROGERS,

Defendant.

NO. 17-1-00097-3

FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
DOUBLE JEOPARDY AND SCORING

On December 21, 2018, ^{and Jan. 23, 2019,} a sentencing hearing was held in this Court before the Honorable Robert Lewis. The Defendant was present with his attorney of record, Jeff Staples. Sr. Deputy Prosecuting Attorney Colin P. Hayes represented the State. The Court considered the testimony of Nancy Druckenmiller at the sentencing hearing, the evidence admitted at the sentencing hearing, the testimony and exhibits admitted at trial, and the verdicts of the jury. This court made the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1.1 The evidence, to-convict instructions, elections by the State in closing argument to correspond specific incidents with specific counts, and the verdicts of the jury established that the Counts II - V cover three distinct incidents, divided as follows:

(1) Counts II (Rape Child 1) and III (Child Molestation 1), relating to the incident on the couch in the living room where the Defendant got on top of the victim, with his front side against her back side, and rubbed his penis back and forth between the victim's

closed legs and, at one point while doing this, slightly penetrated the victim's vagina with his penis;

(2) Count IV (Rape Child 1), corresponding to the instance of oral sex that occurred in the Defendant's room when the victim was watching Hannah Montana on television; the Defendant gave the victim Dibs ice cream after the oral sex; and

(3) Count V (Rape Child 1), pertaining to the instance of oral sex that occurred in the bedroom of Dimitrius Rogers, brother of the Defendant.

1.2 The Defendant has the following prior criminal history:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV**? YES	PTS.
BURGLARY I (FIREARM)	CLARK/WA 05-8-00471-7	4/4/2005	4/28/2005		2
ATTEMPTED RESIDENTIAL BURGLARY	CLARK/WA 07-8-00221-4	2/25/2007	5/23/2007		½

II. CONCLUSIONS OF LAW

2.1 The court has jurisdiction over the Defendant and the subject matter of this action.

2.2 Sufficient evidence supports the jury's verdicts ^{and special verdicts} regarding Counts II – V; the defense motion for arrest of judgment is denied.

2.3 Under the "same evidence" test, the current convictions for the crimes of Rape of a Child in the First Degree in Count II and Child Molestation in the First Degree in Count III occurring in the same incident do not violate double jeopardy. *See State v. Land*, 172 Wn. App. 593, 600, 295 P.3d 782, 785 (2013), *review denied*, 177 Wn.2d 1016, 304 P.3d 114 (2013); *State v. French*, 157 Wn.2d 593, 610–12, 141 P.3d 54, 62–64 (2006); *State v. Wilkins*, 200 Wn. App. 794, 806–14, 403 P.3d 890, 897–901 (2017).

2.4 Double jeopardy does not require the dismissal of any of the current trial convictions.

~~2.5 The Washington Supreme Court case of *State v. Chenoweth*, 185 Wn.2d 218, 221–24, 370 P.3d 6, 8–9 (2016), controls this Court's calculation of the offender scores under the same criminal conduct analysis. The crimes of Child Molestation in the First Degree and Rape of a Child in the First Degree have different criminal intents and therefore cannot constitute the same criminal conduct even if occurring in the same incident. All current convictions score against one another.~~

2.5. The Court finds that Counts 2 and 3 are the same criminal conduct.

2.6 The Defendant has the following offender scores on the current convictions:

Exhibit C

I, Jeffrey Staples, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

I am an attorney licensed to practice law in the State of Washington. In my capacity as an attorney at law I represented Daryl Rogers in Clark County Cause Number 17-1-00097-3. This declaration is true and correct to the best of my knowledge.

As part of my representation of Mr. Rogers in this matter, I and my investigator attempted to obtain information regarding a 2010 incident that involved Mr. Rogers and the mother of the alleged victim in this matter where police were called. My investigator made a request to the regional 911 operator for any information it possessed, but we were informed that no records existed, as such records were only maintained for six years. We were also provided information from the prosecuting attorney's office indicating that they had made a similar request to the 911 operator and been informed there were no available records as well.

As part of my representation of Mr. Rogers in this matter, I requested discovery from the prosecuting attorney's office in writing. I believe, to the best of my recollection, that I also orally requested that the assigned prosecutor provide me any reports that were generated by police as part of the 2010 incident. My recollection is that no such reports were available and that none were provided to us.

SUBSCRIBED AND SWORN this 9th day of December, 2020 in Vancouver, Washington.



Jeffrey Staples, WSBA# 40738
Attorney at Law

Exhibit D



Jeff Staples <jeffstapleslaw@gmail.com>

Fwd: Records Request :: W009588-051718

1 message

John Visser <john@investigativesolutions.us>
To: Jeff Staples <jeffstapleslaw@gmail.com>

Mon, Nov 9, 2020 at 12:01 PM

Hi Jeff,

Here is the CRESA email based on a request for Daryl Rogers 2010 reports.

Kindest regards,
Yvonne



JOHN D. VISSER

INVESTIGATIVE SOLUTIONS LLC

360.910.1190

9901 NE 7th Ave Suite B-235 VANCOUVER WA 98685

30 years of Investigative Experience

Notice: This email is intended for the exclusive use of the person or persons to whom it is addressed. The Electronic Communications Privacy Act, 19 USC Sections 2510-2521 applies to this email. Unauthorized review and distribution is strictly prohibited. If you are not the intended recipient, please contact the sender by phone or reply email.

Do not disseminate this email and destroy the original email and any copies.

----- Forwarded message -----

From: CRESA 9-1-1 <cresa@mycusthelp.net>
Date: Thu, May 24, 2018 at 2:56 PM
Subject: Records Request :: W009588-051718
To: getthetruth@comcast.net <getthetruth@comcast.net>

--- Please respond above this line ---



05/24/2018

private investigator John Visser
10000 NE 7th Ave. Suite 360
Vancouver WA 98685

RE: PUBLIC RECORDS REQUEST of 5/17/2018, Reference # W009588-051718

Dear John,

CRESA received a public records request from you on 5/17/2018 related to the incident(s) located at: 2104 NE 98th Ave. Vancouver

Please note that since the incident(s) occurred more than six (6) years ago, there are no available records. In accordance with Washington State records retention guidelines, CRESA retains 9-1-1 records for six years from the date of the incident, after this retention period, these records are permanently deleted.

Your request is now considered withdrawn and closed.

Sincerely,
CRESA Administrative Services

To monitor the progress or update this request please log into the CRESA PUBLIC RECORDS SYSTEM.

Exhibit E



Daryl Rogers <drogers5464@gmail.com>

Records Request :: W011010-082918

CRESA 9-1-1 <cresa@mycusthelp.net>

Wed, Sep 12, 2018 at 10:15 AM

To: "drogers5464@gmail.com" <drogers5464@gmail.com>

--- Please respond above this line ---



09/12/2018

Daryl Rogers

RE: PUBLIC RECORDS REQUEST of 8/29/2018, Reference # W011010-082918

Dear Daryl,

CRESA received a public records request from you on 8/29/2018 related to the incident(s) located at: 2104 NE 98th Avenue
Vancouver, WA 98664

CRESA has completed the necessary research and determined there are no records responsive to your request. Your request is now considered withdrawn.
If additional information becomes available that may allow CRESA to locate the records you are seeking, please re-submit a new request.

Sincerely,

CRESA Administrative Services

To monitor the progress or update this request please log into the CRESA PUBLIC RECORDS SYSTEM.



Daryl Rogers <drogers5464@gmail.com>

Records Request :: W011010-082918

CRESA 9-1-1 <cresa@mycusthelp.net>
To: "drogers5464@gmail.com" <drogers5464@gmail.com>

Wed, Sep 12, 2018 at 10:19 AM

--- Please respond above this line ---



09/12/2018

Daryl Rogers

RE: PUBLIC RECORDS REQUEST of 8/29/2018, Reference # W011010-082918

Dear Daryl,

CRESA received a public records request from you on 8/29/2018 related to the incident(s) located at: 2104 NE 98th Avenue
Vancouver, WA 98664

Please note that since the incident(s) occurred more than six (6) years ago, there are no available records. In accordance with Washington State records retention guidelines, CRESA retains 9-1-1 records for six years from the date of the incident, after this retention period, these records are permanently deleted.

Your request is now considered withdrawn and closed.

[Quoted text hidden]

Exhibit F



Jeff Staples <jeffstapleslaw@gmail.com>

follow-up on report info - DARYL ROGERS

1 MESSAGE

Hayes, Colin <Colin.Hayes@clark.wa.gov>
To: "Jeff Staples (jeffstapleslaw@gmail.com)" <jeffstapleslaw@gmail.com>

Wed, Oct 31, 2018 at 4:43 PM.

Det. Hernandez checked with dispatch and they no longer have records from 2010. She called dispatch to verify.

She checked EPR (the old report writing system) and it is not showing up in there. That is the system that was being used in 2010.

Detective Hernandez is not sure exactly what it was she saw back in 2016, but she is now sure it was not a police report since there no record of one in EPR. She thinks that she what she came across was some sort of dispatch call notes.

Regards,

Colin P. Hayes

Sr. Deputy Prosecuting Attorney

Clark County Prosecutor's Office

Children's Justice Center

601 W. Evergreen Blvd., Suite 101

P.O. Box 61992

Vancouver, WA 98666-5000

P: 360-397-6002

F: 360-759-6753

This e-mail and related attachments and any response may be subject to public disclosure under state law.

Exhibit G

GENERAL AFFIDAVIT

COMES NOW, DARYL ROGERS, resident of 1911 CONSTANTINE WAY, ABERDEEN, WA 98520
County of GRAYS HARBOR, State of WASHINGTON and who
makes this his/her statement and General Affidavit upon oath and affirmation of
belief and personal knowledge that the following matters, facts and things set

forth are true and correct to the best of his/her knowledge:

On March 1, 2016 during an investigative interview that turned into Case No. 17-1-00097-3, I informed the two Detectives conducting the interview, Detective Monica Hernandez and Detective James Phelps, of the 2010 police incident between myself and the complaining witness' family. I also requested of the Detectives to find documentation of the 2010 police incident as it would prove the last date that I had any contact with the complaining witness Jazmyne Ogletree. This date is significant because it contradicts the complaining witness' statement that I sexually abused or had inappropriate contact (Rape or Child Molestation) with her for over a year. This date is further significant as it would also contradict Amanda Poindexter's (complaining witness' mother) testimony that their family lived with me and my family for 4-6 months. If the documentation of the 2010 police incident was produced, its date would have refuted the only two prosecution witnesses with relevant testimony of the time in question, the complaining witness and her mother Amanda Poindexter. The missing documentation of the 2010 police incident and its date would validate my defense and impeach the complaining witness' testimony and in turn invalidated the prosecution's expert witnesses. Ms. Ogletree's statements regarding being sexually abused by me for over a year and the effects of this prolonged sexual abuse is the only basis for the testimony of the prosecutions expert witnesses. Therefore the missing documentation of the 2010 police incident and its date would impeach the complaining witness, which invalidates the prosecution's expert witnesses' testimony and validates my defense at trial.

My defense at trial was that (a) Ms. Ogletree and her family did not live with my family for a year or 4-6 months, but instead for a month and a half (it's to be noted that this month and a half includes the two week period leading up to the 2010 police incident, where the complaining witness and her family was out of the home and had no contact with me or my family. This is agreed upon by Amanda Poindexter the prosecution's witness.); (b) the short amount of time that I had contact with the complaining witness and her family in addition to 1. the amount of people living in the home (8 people that includes myself, Shatyrá Rogers - my sister, Demetrius Rogers - my brother, Montreal Douglas - my friend, Jazmyne Ogletree - complaining witness, Amanda Poindexter - complaining witness' mother, Xavier Owens - complaining witness' brother, and James Poindexter - complaining witness' brother) 2. the 760 ft² of available living space at 2104 NE 98th Avenue, Vancouver, WA 98664 (there was an additional 480 ft² of garage space used for storage and filled with boxes for a total of 1240 ft² and 3. the schedules of everyone in the home made it impossible for these crimes to have been committed; and (c) my family and the complaining witnesses family split on bad terms resulting in the 2010 police incident.

While preparing for trial I explained the significance of some type of documentation of the 2010 police incident and that the Detectives were informed of this in 2016 to my trial attorney, Jeff Staples. I requested Mr. Staples obtain documentation of this 2010 police incident from the prosecution. This documentation was never handed over to my trial attorney. I also made a separate request for these documents. Trial for this case began on Monday, October 29, 2018. Throughout the trial the 2010 police incident was mentioned in excess of 30 times by prosecution and defense witnesses, establishing the importance of this incident. But when this incident occurred was not agreed on and was in fact heavily in dispute. This further establishes the importance of any documentation that proves the date of this 2010 police incident. The existence of documentation of the 2010 police incident being obtained by Detective Hernandez in 2016 while investigating this case was not mentioned during Detective Hernandez' direct, cross, or rebuttal testimony at trial. Both the prosecution and defense rested its case around 4pm on Wednesday, October 31, 2018. An email acknowledging that Detective Hernandez had possession of documentation of the 2010 police incident in 2016 while investigating this case was sent to my trial attorney by the prosecuting attorney, Colin Hayes at 4:43 pm on Wednesday, October 31, 2018. I was never informed by my trial attorney that this email was sent by the prosecuting attorney. I was made aware of this email in late September 2020, after receiving my entire case file from my trial attorney.

this documentation of the 2010 police incident is the only impartial evidence gathered from the time in question (2010) and contains the last date that I had any contact with Ms. Ogletree or her family. All other evidence and/or testimony was gathered years later (2016) and is solely based on the complaining witnesses' statements. The documentation of the 2010 police incident and its date proves that I did not have contact with the complaining witness for a year, but instead for 6 weeks or less. If this documentation of the 2010 police incident was made available it would have 1. corroborated my trial testimony as well as the trial testimony of each defense witness; 2. contradicted the complaining witness' trial testimony; 3. invalidated expert witness testimony; and 4. validated my trial defense.

WITNESS my signature, this the 29 day of April, 2022.

DANIEL ROGERS

Signature of Affiant